

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

)  
UNITED STATES OF AMERICA, )  
                              )  
Plaintiff,                )  
                              ) Criminal Action  
v.                         ) No. 04-10385-MEL  
                              )  
JEROME WEEKS,            )  
                              )  
Defendant.                )  
                              )

BEFORE THE HONORABLE MORRIS E. LASKER  
SENIOR UNITED STATES DISTRICT JUDGE

DISPOSITION

John J. Moakley United States Courthouse  
Courtroom No. 8  
One Courthouse Way  
Boston, Massachusetts 02210  
Wednesday, July 11, 2007  
11 a.m.

Marcia G. Patrisso, RMR, CRR  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 3510  
Boston, Massachusetts 02210  
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

1 APPEARANCES:

2 OFFICE OF THE UNITED STATES ATTORNEY  
3 By: Christopher F. Bator, Assistant U.S. Attorney  
John Joseph Moakley Federal Courthouse  
One Courthouse Way  
4 Boston, Massachusetts 02210  
On Behalf of the Government

5 LAW OFFICE OF J. THOMAS KERNER  
6 By: J. Thomas Kerner, Esq.  
343 Commercial Street - Unit 104  
7 Boston, Massachusetts 02109  
On Behalf of the Defendant

8 In Attendance: Jesse Gomes, U.S. Probation Office

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## P R O C E E D I N G S

4           THE COURT: I received, as I guess everybody  
5 knows -- except I didn't know it myself until this  
6 morning -- a motion from the defendant for release  
7 pending appeal based on the question of whether a  
8 conversation with an individual named Kevin Brown should  
9 have been admitted or not --

10 Am I correct?

11 MR. KERNER: Yes.

12                   THE COURT: -- as part of the evidence which  
13 would, if admitted, allegedly have been favorable to the  
14 defendant.

15 You haven't had an opportunity to answer this  
16 yet, have you?

17 I'm addressing the United States Attorney.

18                   MR. BATOR: No, your Honor. I've only -- I  
19 think I saw it for the first time yesterday.

20 THE COURT: I saw it for the first time this  
21 morning, which is very troublesome.

22                   MR. KERNER: I would not necessarily be seeking  
23 a hearing on that motion today. I just wanted it to be  
24 filed, and then at an appropriate time in the future,  
25 after the government has a chance to respond, have a

1 hearing.

2 THE COURT: All right. In other words, we'll  
3 proceed with sentencing today?

4 MR. KERNER: Yes.

5 THE COURT: But you would ask to preserve the  
6 right to have me review the situation of whether he  
7 should be released from custody pending appeal after the  
8 government has answered the motion?

9 MR. KERNER: Yes. Yes.

10 MR. BATOR: Preliminarily, I guess it troubles  
11 me, is the right word, too, to receive these motions so  
12 close to the event. My first reaction, your Honor, is  
13 that the motion should be stricken because it's based  
14 entirely on, essentially, assertions --

15 THE COURT: Yeah. Well --

16 MR. BATOR: -- of counsel.

17 THE COURT: -- I don't need you to answer at the  
18 moment.

19 MR. BATOR: But one relevant consideration is  
20 that I also received at the same time notice of appeal.  
21 And I think this -- which is -- I just saw Mr. Kerner  
22 this morning, and I haven't had a chance --

23 THE COURT: I think a notice of appeal is  
24 premature.

25 MR. BATOR: I think it's premature, too,

1       although I assume after the Court imposes sentence,  
2       assuming we go forward today, I anticipate he'll file a  
3       motion for appeal. But at that point isn't the Court  
4       absent jurisdiction with regard to all these matters? I  
5       think one of the issues with regard to this motion is  
6       that it's -- it may be properly the subject matter of an  
7       appellate argument.

8                  THE COURT: Well, I'm not asking you to take a  
9       position on those questions at the moment. I'm  
10      satisfied defense counsel states to me that he does not  
11      intend to ask for relief with regard to this motion  
12      today.

13                  MR. KERNER: No; I just wanted it filed.

14                  THE COURT: I'm ready to proceed to sentencing.

15                  MR. KERNER: Thank you.

16                  (Proceedings in chambers concludes. There is a  
17      recess in the proceedings at 11:18 a.m.)

18                  (In open court:)

19                  THE CLERK: All rise.

20                  Hear ye, hear ye, hear ye, all those having  
21      business before the United States District Court for the  
22      District of Massachusetts draw near, give your  
23      attention, you shall be heard. Court is now in session.

24                  THE COURT: Good morning, everyone.

25                  COUNSEL IN UNISON: Good morning, your Honor.

1                 THE CLERK: This is Criminal 04-10385, United  
2 States of America versus Jerome Weeks.

3                 Will the attorneys please identify themselves,  
4 and who they represent, for the Court.

5                 MR. BATOR: Good afternoon, your Honor.  
6 Christopher Bator for the United States.

7                 THE COURT: Good afternoon, Mr. Bator.

8                 MR. KERNER: Tom Kerner for Mr. Weeks, your  
9 Honor.

10                THE COURT: Good morning, Mr. Kerner.

11                Before I call on Mr. Kerner, who represents Mr.  
12 Weeks, and before I call on Mr. Weeks, I'll give the  
13 government an opportunity to express any views they have  
14 with regard to the sentencing, if you wish to do so.

15                MR. BATOR: I do, your Honor. Would the  
16 government like to hear what the government's -- would  
17 the Court like to hear what the government's  
18 recommendation and what the basis for it is at this time  
19 or did you want to go through the guideline provisions  
20 first?

21                THE COURT: I'm sorry?

22                MR. BATOR: Would the Court like to hear from  
23 the government with regard to its recommendation and  
24 basis for it at this time or did the Court --

25                THE COURT: Yes, I would.

1                   MR. BATOR: Okay. Does the Court intend, if I  
2 may ask, to go through the guidelines issues  
3 subsequently?

4                   THE COURT: I'm satisfied with the guidelines,  
5 if correctly applied in this case, if you'd like to know  
6 that. But I would like to hear what the government's  
7 view is.

8                   MR. BATOR: Again, forgive me for -- because  
9 there are some objections, your Honor. I believe just  
10 as a matter of record we'll have to --

11                  THE COURT: State your position.

12                  MR. BATOR: On behalf of the government? I'm  
13 happy to, your Honor.

14                  The government's recommendation is for guideline  
15 sentence, a sentence at the low end of the guideline,  
16 which the applicable guideline the government believes  
17 is 235 months to 293 months. The government seeks a  
18 sentence at the low end of that guideline, a 235-month  
19 sentence of incarceration, five years of supervised  
20 release, the \$100 mandatory special assessment.

21                  With regard to the fine, the government is in a  
22 bit of a quandary because the presentence report  
23 indicates that the defendant has not submitted and has  
24 not -- and has been unwilling to provide requested  
25 financial information. So as the probation officer in

1 the presentence report has indicated, there's no  
2 indication of inability to pay a fine.

3           The government believes it's seeking a very  
4 significant sentence here and does not wish to be  
5 heavy-handed, but in the absence of that information is  
6 a little bit at a loss of what to request and believes  
7 that some -- absent that information, which a defendant  
8 is required to provide to the probation office,  
9 particularly to indicate if there's an inability to pay  
10 a fine -- that absent the provision of that information  
11 some fine, given the seriousness of the charges here and  
12 the complete record of the defendant, would be  
13 appropriate.

14           But the government would defer to the Court with  
15 regard to what is appropriate, but its position is:  
16 Absent that information, some fine would be appropriate.

17           THE COURT: I hear you.

18           MR. BATOR: With regard to the basis for the  
19 government's recommendation, the government recognizes  
20 that it is asking for a very significant sentence here.  
21 And particularly in view of the 15-year minimum  
22 mandatory and the guideline range -- armed career  
23 criminal guideline range here -- is somewhat above the  
24 15-year minimum mandatory.

25           The guideline range is approximately 19 and a

1 half years to approximately 24 and a half years. And  
2 the government is asking for the 235 months, the low end  
3 of that guideline.

4 The government feels very strongly that a  
5 guideline sentence is appropriate in this case.  
6 Entirely appropriate. And the reason for that is what  
7 is an established, extensive record of criminal behavior  
8 involving significant violence and drug trafficking of  
9 the defendant over a very long time.

10 The one thing that I should say honestly, your  
11 Honor, that troubles the government to some extent is  
12 that throughout the tone of the defendant's filings, the  
13 defendant's own letter, there's a suggestion that, as  
14 the defendant says in his letter, I'm not the bad guy,  
15 the prosecutor -- he says the ADA -- the prosecutor  
16 makes me out to be.

17 And the suggestion is the record isn't very  
18 significant, it's minimal; if he qualifies as an armed  
19 career criminal, it's only just barely. And that is  
20 absolutely not the case. The defendant has, depending  
21 on how you count, four or five armed career criminal  
22 predicates. He's not barely qualifying, he's adequately  
23 qualifying. He has a criminal history score of -- the  
24 PSR indicates it's 19 points. I spoke with Mr. Gomes  
25 having noticed -- this morning, having noticing

1 something last night. I think the accurate number is 21  
2 points because he gets two additional points for  
3 having -- under Sentencing Guideline 4A.1.1(d) for  
4 having committed the instant crime while under  
5 supervision of another sentence. And I'd refer the  
6 Court to Paragraph 4 of the conviction, Paragraph 48.  
7 If that's true, and I believe Mr. Gomes concurs with  
8 that, for purposes of his arguments, he would have 21  
9 points.

10 There's a First Circuit case, *Brown*, your Honor,  
11 *United States v. Brown*, 899 F.2d 94, which holds that a  
12 significant -- a criminal history score significantly  
13 above the 13 points which qualifies you for Category VI  
14 is, itself, a basis for an upward departure. *Brown* is  
15 the case where the criminal -- the defendant had 20  
16 points. And in the language in *Brown* the Court -- the  
17 First Circuit says that is off the charts and qualifies  
18 as an appropriate basis for an upward departure from the  
19 guideline.

20 The government isn't seeking an upward departure  
21 from the guideline; the government is seeking a low-end  
22 guideline sentence. But I think that's more evidence  
23 that his record is very significant. And I'd like to  
24 spend a second detailing it because I think the record  
25 should appropriately reflect that, and I want to make

1       sure I can draw the Court's attention to it.

2               Beginning at age 16 through the present there  
3       are just continual, repeated convictions for assault and  
4       battery, assault and battery with a dangerous weapon,  
5       resisting arrest, distributing cocaine. The record is  
6       persistent --

7               THE COURT: It's considerable.

8               MR. BATOR: -- and elaborate.

9               And it is entirely consistent with the crime of  
10      conviction in this case, and it is, it seems to me,  
11      entirely consistent with the behavior of the defendant  
12      when he did not show up for sentencing having been  
13      given, in the government's view, a considerable break to  
14      be allowed to be out pending sentencing, facing such a  
15      large sentence, that he absconded and --

16               THE COURT: Right.

17               MR. BATOR: -- was found with what the  
18      government believes are the trappings and tools of a  
19      dangerous criminal. He was found with two loaded  
20      weapons -- two loaded 9-millimeter -- fully-loaded  
21      9-millimeter weapons -- and five false identity papers  
22      including a birth certificate, a social security card, a  
23      credit card and a couple of others in another name  
24      bearing some of the -- a Georgia driver's license  
25      bearing his picture in another name. Those are the

1 tools of an armed career criminal, your Honor. And I  
2 believe that is the picture that his record  
3 appropriately presents.

4 I think the other thing I'd point on briefly is  
5 I do believe that the defendant perjured himself during  
6 his trial. I think that was the jury's determination.  
7 The case essentially came down to a credibility contest  
8 between the defendant and the police officers; in  
9 particular, Officer Darrah.

10 And I think the defendant came in here and  
11 told -- and lied to the Court and lied to the jury with  
12 regard to this -- what the government believes was this  
13 fairytale about the other car -- the Court will remember  
14 from the trial -- with the man in the Red Sox shirt who  
15 there had been an interaction -- previous interaction  
16 with in the bar, driving not down this alleyway toward  
17 the -- purportedly toward the defendant, Mr. Brown,  
18 firing a gun and then either dropping or leaving a  
19 loaded gun for the defendant to -- Mr. Brown to find.  
20 And the defendant says that happened and of course he  
21 didn't pick up the gun, Mr. Brown did, and he was  
22 unaware of this.

23 The notion that they would be running -- it's  
24 undisputed the defendants were running in the direction  
25 of this car -- them running in the direction of someone

1 who was firing shots at them is, among other things,  
2 part of what the government believed was a fairytale and  
3 was bald-face lies in front of the Court and in front of  
4 the jury, for which the government believes the  
5 defendant deserves a two-point obstruction enhancement.  
6 The enhancement already applies, as the PSR indicates,  
7 as a result of the absconding at the time of sentencing.  
8 But I think that is consistent with this picture of the  
9 defendant.

10           I intended to go on longer but I think the Court  
11 understands the government's position.

12           THE COURT: I think you've adequately covered  
13 it.

14           MR. BATOR: Thank you, your Honor.

15           THE COURT: Thank you, sir.

16           Mr. Kerner?

17           MR. KERNER: Thank you, your Honor.

18           Your Honor, I filed a sentencing memorandum, and  
19 in that memorandum I indicated that I believed that the  
20 criminal history category was overstated by the  
21 probation department, and that for the reasons stated in  
22 my memorandum that he is -- he should be assessed 17  
23 criminal history points, which still puts him into  
24 Category VI.

25           I further stated that I believe that if you look

1 at the nature of his prior convictions, they were all  
2 convictions which resulted in either a probationary  
3 sentence or a relatively short time in a county house of  
4 correction.

5 My argument was that a Level VI is the worst  
6 category that you can be put into under the guidelines,  
7 and I suggested that even though Mr. Weeks does have a  
8 fairly substantial prior criminal history, that it is  
9 far from being the worst that comes through these  
10 courthouse doors.

11 The main argument, your Honor, is really whether  
12 or not the assault and battery in Somerville, and  
13 possibly the resisting arrest in Brockton, are violent  
14 felonies for purposes of the ACC. And they aren't for  
15 two reasons: One, they are state misdemeanors,  
16 punishable by two years or less, so they are excluded  
17 under the statute; and, two, they are -- there is  
18 nothing in the -- there's nothing before the Court  
19 admissible under *Shepard* which would indicate that  
20 either resisting arrest or the assault and battery were  
21 violent felonies; they were just generic assault and  
22 battery, generic resisting arrest.

23 And there are two ways in which both of those  
24 crimes can be committed; both of those crimes can be  
25 committed without violence. And there's nothing to

1 indicate -- there's nothing before this Court that is  
2 admissible under *Shepard* to show that it was committed  
3 in a way that was violent.

4 The police reports are not admissible; there are  
5 no plea colloquies; there is -- I've been provided with  
6 no charging documents which indicate that there was  
7 violence associated with either one of these crimes. So  
8 you cannot consider them violent felonies, I would  
9 suggest, based on *Shepard*, and pursuant to the statute  
10 they are not violent felonies and they cannot be ACC  
11 predicates. Even if there is something in there which  
12 indicates there was some threat of force or force used,  
13 they are still state misdemeanors punishable by two  
14 years or less; and, thus, they are excluded from the ACC  
15 pursuant to the statute.

16 My argument, your Honor, is that you should  
17 consider the guidelines at Offense Level 24, and  
18 criminal -- the guideline should be criminal Category  
19 VI, Offense Level 24. And my suggestion is that given  
20 that even though there are sufficient points to place  
21 Mr. Weeks into Category VI, because of the nature of  
22 most of those convictions -- I would suggest that only  
23 the two drug charges are felonies -- that it would be  
24 appropriate to depart from the guidelines by one  
25 criminal history category to Criminal History Category

1 V, and that would put him into a situation where the  
2 guideline range is 92 to 115 months.

3 Now, Judge, this was a conviction which Mr.  
4 Weeks is appealing. This is a conviction that was  
5 returned by a jury -- an all-white jury that was chosen  
6 under a system that has now been revamped by this court.  
7 It was objected to at the time of the impaneling; I  
8 objected to the fact that the whole panel consisted of  
9 no African-Americans and I asked for a new panel, and  
10 that was denied.

11 Since that time this court, the district court,  
12 has revamped its procedures for calling people for jury  
13 duty to get a more representative racial mix of the jury  
14 panels.

15 THE COURT: Right.

16 MR. KERNER: And so if it was not a fair -- he  
17 was not convicted under a fair jury-picking system  
18 because if it was fair, they would have kept it that  
19 way. It wasn't fair then -- and it may be fair now, but  
20 it wasn't fair then. And we objected to that. And he  
21 was convicted by an all-white jury and he was convicted  
22 by lying white police officers.

23 And we know that they were lying because we have  
24 a transcript of one police officer from a motion to  
25 suppress hearing before you where he sat right over

1 there, and the police officer, whose name is Healy, said  
2 that Darrah, the main police officer, told Healy on the  
3 night of the incident that Mr. Weeks jumped over the  
4 short six-foot fence with the barbed wire. And then he  
5 came into court and he lied. He lied to the jury, he  
6 lied to you, he lied to everybody, and he said that  
7 Darrah told him that he jumped over the eight-foot fence  
8 into that little pen area where the gun and the phone  
9 were found.

10 And he said that after he was spoken to by the  
11 U.S. Attorney's Office. And his excuse was, "Oh, I was  
12 confused." He was not confused because -- I have the  
13 transcript right here.

14 THE COURT: We're not retrying the case.

15 MR. KERNER: I'm not retrying the case but I'm  
16 pointing out to you that this was an issue that you have  
17 to take into consideration.

18 THE COURT: Not with regard to sentencing. If  
19 the defendant is not guilty, that's one thing; but if  
20 he's guilty, then I have to decide what's an appropriate  
21 sentence. And that doesn't depend on the issues that  
22 you're now talking about. The other ones, it does.

23 MR. KERNER: Yes. Well, the government claims  
24 that it's their opinion that Mr. Weeks lied during the  
25 trial. Well, that's the government's opinion. We have

1 proof that the government lied.

2 THE COURT: I don't -- come on. Calm down. I  
3 don't accept the government's, quote, opinion either.

4 MR. KERNER: Thank you, your Honor. I'll move  
5 on. I appreciate that.

6 If this case were properly brought in the  
7 Brockton District Court where it belonged, he would be  
8 facing a one-year minimum mandatory for possession of a  
9 gun -- if he was convicted -- possession of a gun  
10 without a license. That's what the punishment is in the  
11 state court.

12 THE COURT: Well, your complaint there is with  
13 the executive or the Congress, not with me.

14 MR. KERNER: Yes. And this is my argument for a  
15 departure, all right?

16 THE COURT: It's not a recognized argument for  
17 departure.

18 MR. KERNER: It could be.

19 THE COURT: The fact that a penalty would be  
20 less in the state system is not a recognized argument  
21 for departure. And I'm a great departer, I'll tell you.

22 MR. KERNER: But if you take into consideration  
23 the circumstances under which this case got here it may  
24 be. Because what happened that night is Mr. Weeks and  
25 Mr. Kelvin Brown were both charged with possessing that

1 gun.

2 Mr. Kelvin Brown's case -- it wasn't a situation  
3 where the police didn't know what happened and then a  
4 couple of hours later, or a couple of days later, even  
5 weeks later, hashed things out, dismissed Kelvin Brown  
6 and prosecuted Mr. Weeks. What happened is that they  
7 figured out that they could get 15 years from Mr. Weeks  
8 and not from Mr. Brown, and that's why the case was  
9 brought here.

10 MR. BATOR: I'm going to object, your Honor.

11 THE COURT: It would be a perfectly good reason  
12 for bringing it here. I have nothing to do with that,  
13 and you know that.

14 MR. KERNER: I know that you have nothing to do  
15 with it.

16 THE COURT: It is nothing that is appropriate  
17 for me to consider.

18 MR. KERNER: Thank you, your Honor.

19 THE COURT: Would you please get to your  
20 recommendation?

21 MR. KERNER: My recommendation is that since  
22 this is a situation where if the case was brought in  
23 state court, he was facing here, I'm asking for a  
24 three-year sentence; I'm asking for 36 months, which is  
25 a considerable sentence.

1           THE COURT: It's perfectly justifiable for you  
2 to ask for anything you want to, but you know very well  
3 that that's not going to fly with the Court of Appeals.

4           MR. KERNER: Then at the very least, your Honor,  
5 I believe that you should determine that Mr. Weeks is  
6 not an ACC, he does not qualify for the ACC, and that  
7 his guidelines should be 24/VI, and that you would be --  
8 it would be appropriate for you to depart one level on  
9 the criminal history category, from VI to V. And under  
10 24/V, the guidelines are 92 to 115 months. And I would  
11 ask that you -- then if you are not going to depart  
12 further, then 92 months.

13           THE COURT: Thank you very much.

14           MR. KERNER: Thank you.

15           MR. BATOR: Your Honor, may I be heard just for  
16 the record?

17           THE COURT: No. Nothing further. I've heard  
18 enough. I'm ready to proceed. Please be seated.

19           MR. BATOR: Your Honor, for the record above, I  
20 need to respond to his ACC arguments if only to say the  
21 government has previously filed a memorandum and that  
22 its position with regard to his argument whether what  
23 qualifies as an ACC predicate or not, and that  
24 memorandum indicates it's been rejected by the First  
25 Circuit.

1           I need to say that for the record for above,  
2 your Honor, or we'll be back here.

3           THE COURT: I understand.

4           Mr. Weeks, do you want to stand?

5           (Defendant rises.)

6           THE COURT: Mr. Weeks, here we are all gathered  
7 together because of your case. It's a pretty heavy  
8 moment for you, it's a pretty heavy moment for me, too.  
9 You can tell me anything you want before I go ahead and  
10 impose a sentence. I have to impose a significant  
11 sentence here, and you know it. And I'd like to hear  
12 what you have to say before I do it.

13           THE DEFENDANT: All right. First I want to say  
14 I'm sorry for not showing up for sentencing. The reason  
15 why I didn't show up was because my father was sick and  
16 I had to take care of my little sisters. And I was  
17 having a little baby girl.

18           I'm 27 years old with two beautiful little girls  
19 that I want to see grow up. I'm older now and I know  
20 right from wrong. I know if I had another chance, I  
21 would stay out of trouble and do the right thing.

22           While I was on release I never did any drugs or  
23 drink, I took things serious because I wanted to stay  
24 out. The longest time I ever did in jail was 10 months;  
25 I never did any longer time than that.

1           I'm asking the Court for mercy, to justify [*sic*]  
2 a lenient sentence. Thank you.

3           THE COURT: Well, Mr. Weeks, I'm going to have  
4 to go through a little arithmetic, for the record, to  
5 explain why I'm imposing the sentence that I am imposing  
6 and so on. There's been argument between counsel as to  
7 how you calculate all this stuff. But let me just say  
8 that I adopt the calculations made in the presentence  
9 report by the probation department here, and find that  
10 there is a base offense level of 24, with 2 added as an  
11 adjustment for obstruction of justice and failure to  
12 appear for sentencing, an adjusted offense level of 26.

13           And I conclude with regret, but nevertheless  
14 firmly, that the defendant is subject to the armed  
15 career criminal provision described at 18 U.S.C. Section  
16 924(e) and the guidelines accordingly; second, I  
17 conclude that you have three prior convictions for a  
18 violent felony or a serious drug offense or both,  
19 committed on occasions different from one another; and  
20 that the total offense level is then 33.

21           Against you, to get back to plain English now,  
22 is the nature of what you did: Possessing a firearm  
23 after having been convicted of a felony; together with a  
24 considerable prior record commencing when you were only  
25 16 including assault and battery; attempted larceny on a

1 person resulting in a jail sentence; assault and battery  
2 at age 18 for which a sentence was imposed; a further  
3 assault; knowingly receiving stolen property for which  
4 you received a jail sentence in 1998; sale of cocaine at  
5 the age of 19 where you were sentenced; possession of  
6 cocaine, the one-year committed deemed served; and  
7 battery and resisting arrest in Miami, Florida, in 2002.

8 Now, according to the calculations of the  
9 probation department, which I believe to be correct, in  
10 this case the guideline range is 235 to 293 months. The  
11 statutory minimum is 15 years to life. This is one of  
12 those rare cases in which the guideline minimum is well  
13 above the statutory minimum and in which both such  
14 sentences are substantial and long.

15 I conclude that to impose a sentence of not less  
16 than 235 months, which is the guideline minimum, would  
17 be excessive within the meaning of 18 United States Code  
18 3553(a). Accordingly, I impose the following sentence:  
19 Pursuant to the Sentencing Reform Act of 1984, and  
20 having considered the sentencing statute enumerated at  
21 18 U.S.C. Section 3553(a), it's the judgment of the  
22 Court that the defendant, Jerome Weeks, is hereby  
23 committed to the custody of the Bureau of Prisons, to be  
24 imprisoned for a term of 180 months, which is the  
25 statutory minimum.

1           The Court makes the judicial recommendation that  
2 the defendant participate in anger management or  
3 batterer's counseling, if available, at the designated  
4 Bureau of Prisons' facility.

5           Upon release from imprisonment, the defendant  
6 shall be placed on supervised release for a term of  
7 three years. Within 72 hours of release from custody of  
8 the Bureau of Prisons, you shall report in person to the  
9 district in which you were released.

10          No fine is imposed based on the Court's finding  
11 that there is no evidence of your ability to pay a fine  
12 or that you are likely to become able to do so.

13          While on supervised release you shall comply  
14 with the following conditions: You shall not commit  
15 another offense; you shall refrain from any unlawful use  
16 of a controlled substance and submit to one drug test  
17 within 15 days of release from imprisonment, at least  
18 two periodic tests thereafter, not to exceed 104 tests  
19 per year; you shall submit to the collection of a DNA  
20 sample; you shall comply with the standard conditions as  
21 has been adopted by the Court which are described in the  
22 guidelines, Section 5D1.3(c); and you're prohibited from  
23 possessing a firearm or other dangerous weapon.

24          It is further and finally determined that you  
25 shall pay to the United States a special assessment of

1       \$100, which shall be due.

2                 Now, Mr. Weeks, I've gone down as far as it's  
3 possible for me to go, and it's still a very tough  
4 sentence, I realize. I don't write the laws; I'm  
5 obligated to impose a sentence as the laws are imposed  
6 on me. You will get time off each year for good  
7 behavior, if you behave well, and that will reduce the  
8 sentence by a number of years, although it's still going  
9 to be long.

10               You will still, however, not be an old man when  
11 you come out, and I hope and believe and wish that  
12 things will turn around for you and for society and for  
13 your friends and family who are here today, all of whose  
14 letters I received and read and care about. But they  
15 must know that I'm not just free to do anything I wish.

16               I want to tell you that you have the right to  
17 appeal both your conviction and your sentence. You have  
18 significant reasons to appeal your conviction because  
19 you have a question of suppression of evidence and other  
20 issues raised by your attorney.

21               I assume that counsel will arrange to file a  
22 notice of appeal forthwith. Am I correct in that  
23 regard?

24               MR. KERNER: Yes, your Honor.

25               THE COURT: Very good.

1           MR. GOMES: Your Honor, perhaps I missed it.

2       What term of supervised release did you wish to impose?

3           THE COURT: Excuse me. I thought I did.

4           MR. BATOR: I believe the Court indicated three  
5 years.

6           THE CLERK: Three years.

7           MR. GOMES: Three years? All right.

8           THE COURT: Yes. A three-year term of  
9 supervised release.

10           That concludes the proceedings for today, and  
11 I --

12           MR. BATOR: Your Honor, I need to state -- to be  
13 heard very briefly as a matter of form for the appellate  
14 court. I need to state an objection to the sentence for  
15 the basis that it's below the minimum mandatory.

16           I should also point out that pursuant to Federal  
17 Criminal 32 and United States -- the Supreme Court of  
18 the United States, *Burns* -- *United States v. Burns*, 501  
19 U.S., 135,136, the Court is -- the parties are required  
20 to give some notice of a *sua sponte* deviation from the  
21 guidelines.

22           I assume this is -- the Court indicated this is  
23 not a departure but a deviation under the 35 --

24           THE COURT: That's correct.

25           MR. BATOR: -- because -- it's part of what the

1 rule requires in order to give the parties full  
2 opportunity to comment on the basis for the sentence.

3 THE COURT: What section are you referring to?

4 MR. BATOR: I'm sorry? Yes. Rule -- it's  
5 Federal Criminal Rule 32(i)(1)(C) which --

6 THE COURT: Excuse me.

7 MR. BATOR: -- mandates that the district court  
8 allow parties to comment on -- relating to appropriate  
9 sentence, in the *Supreme Court v. Burns*, in providing a  
10 guideline --

11 THE COURT: Just give me a chance to look, will  
12 you? You're going too fast for me. 32(i)(1)(C)?

13 MR. BATOR: Yeah. 32(i)(1)(C).

14 THE COURT: It's some system.

15 MR. BATOR: The Court indicated -- I didn't  
16 invent it myself, your Honor.

17 THE COURT: Are you referring to the phrase  
18 which says "must allow the parties' attorneys to comment  
19 on the probation officer's determinations and other  
20 matters relating to an appropriate sentence"?

21 MR. BATOR: Yes. As it's been construed by the  
22 Supreme Court in the *Burns* case, your Honor, which has  
23 indicated that the parties -- gives the parties some  
24 right to be notified that the Court is contemplating  
25 what a sentence will be in order to give full comment.

1           THE COURT: I'm amazed that in my 39 years on  
2 the bench, but in my 13 years here in Boston, this has  
3 never been brought to my attention before. If you wish  
4 to start from scratch today, go ahead and give me your  
5 position.

6           MR. BATOR: Well, I think it's more to -- all  
7 the Court is saying, and I should add that the office --  
8 the assistant U.S. attorneys are routinely making this  
9 objection so that when we come into court we have some  
10 idea of what to argue -- with regard to what the Court  
11 may be thinking. All the Court has said this morning is  
12 that the guideline sentence, even at the low end, which  
13 the government -- is excessive, and nothing more.

14           THE COURT: That is a word that was used in a  
15 recent commutation of sentence also.

16           MR. BATOR: No. No. And I don't suggest that  
17 there's anything inappropriate about that. But it's  
18 very limited in citing -- for the government to have  
19 some sense of why the sentence is excessive and then to  
20 be able to respond in some sense, is what would fulfill  
21 I think, what the requirements of the rule and *Burns*  
22 say on --

23           THE COURT: I'd be glad to hear anything that  
24 you wish to tell me as to why it is not excessive.

25           MR. BATOR: Well, I think the government has

1 made its arguments with regard to that, your Honor.

2 THE COURT: That's what I thought. I heard you  
3 all. I don't know what more can be done.

4 MR. BATOR: Well, I think having some  
5 understanding of why the Court --

6 THE COURT: You have the right to appeal, too.

7 Thank you, everyone.

8 MR. KERNER: Thank you, your Honor.

9 THE CLERK: All rise.

10 Court is now in recess.

11 (The proceedings adjourned at 11:54 a.m.)

12

13 C E R T I F I C A T E

14

15 I, Marcia G. Patrisso, RMR, CRR, Official  
16 Reporter of the United States District Court, do hereby  
17 certify that the foregoing transcript constitutes, to  
18 the best of my skill and ability, a true and accurate  
19 transcription of my stenotype notes taken in the matter  
20 of Criminal Action No. 04-10385-MEL, United States v.  
21 Jerome Weeks.

22

23 /s/ Marcia G. Patrisso  
24 MARCIA G. PATRISSO, RMR, CRR  
25 Official Court Reporter